

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of BARBARA J. GAINES and DEPARTMENT OF VETERANS AFFAIRS,  
CHICAGO HEALTH CARE SYSTEM -- WEST SIDE DIVISION, Chicago, IL

*Docket No. 02-985; Submitted on the Record;  
Issued September 3, 2002*

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DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,  
WILLIE T.C. THOMAS

The issues are: (1) whether the Office of Workers' Compensation Programs properly denied appellant's request for review of the written record; and (2) whether the Office properly denied appellant's request for reconsideration.

On June 16, 2000 appellant, a 55-year-old addiction therapist, filed a notice of occupational disease and claim for compensation (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal employment. She identified June 14, 2000 as the date she first became aware of her employment-related condition. Appellant explained that she utilized a computer keyboard as part of her job.

In a decision dated September 13, 2000, the Office denied appellant's claim on the basis that she failed to establish that she sustained an injury as alleged.

By letter dated October 13, 2000 and post-marked October 16, 2000, appellant requested a review of the written record. By decision dated February 26, 2001, the Office found that appellant did not submit her request for review of the written record within 30 days of the Office's September 13, 2000 decision and, therefore, she was not entitled to a review of the written record as a matter of right. Additionally, the Office considered the matter in relation to the issue involved and denied appellant's request on the basis that the issues could equally well be addressed through the reconsideration process.

In a letter dated May 21, 2001, appellant advised the Office of her desire to appeal her case. She further indicated that she wished to be informed of her rights and any further documentation necessary to appeal. The Office interpreted appellant's May 21, 2000 correspondence as a request for reconsideration and in a decision dated September 28, 2001, the Office denied appellant's request without reaching the merits of her claim.

The Board finds that the Office properly denied appellant's request for a review of the written record.

Any claimant dissatisfied with a decision of the Office shall be afforded an opportunity for an oral hearing or, in lieu thereof, a review of the written record. A request for either an oral hearing or a review of the written record must be submitted, in writing, within 30 days of the date of the decision for which a hearing is sought. A claimant is not entitled to a hearing or a review of the written record if the request is not made within 30 days of the date of the decision for which a hearing is sought.<sup>1</sup> However, the Office has the discretion to grant or deny a request that was made after this 30-day period.<sup>2</sup> In such a case, the Office will determine whether a discretionary hearing should be granted and, if not, will so advise the claimant with reasons.<sup>3</sup>

Appellant's request for a review of the written record was postmarked October 16, 2000, which is more than 30 days after the Office's September 13, 2000 decision. As such, she is not entitled to a review of the written record as a matter of right. Moreover, the Office considered whether to grant a discretionary review and correctly advised appellant that the issue of whether she sustained an injury due to factors of her employment could equally well be addressed by requesting reconsideration.<sup>4</sup> Accordingly, the Board finds that the Office properly exercised its discretion in denying appellant's untimely request for a review of the written record.

The Board also finds that the Office properly exercised its discretion in denying appellant's request for reconsideration.

Section 10.606(b)(2) of Title 20 of the Code of Federal Regulations provides that a claimant may obtain a review of the merits of the claim by either: (1) showing that the Office erroneously applied or interpreted a specific point of law; (2) advancing a relevant legal argument not previously considered by the Office; or (3) submitting relevant and pertinent new evidence not previously considered by the Office.<sup>5</sup> Section 10.608(b) provides that when an application for reconsideration does not meet at least one of the three requirements enumerated under section 10.606(b)(2), the Office will deny the application for reconsideration without reopening the case for a review on the merits.<sup>6</sup>

Appellant's May 21, 2001 request for reconsideration neither alleged nor demonstrated that the Office erroneously applied or interpreted a specific point of law. Additionally, appellant did not advance a relevant legal argument not previously considered by the Office. Consequently, appellant is not entitled to a review of the merits of her claim based on the first and second above-noted requirements under section 10.606(b)(2). Additionally, as appellant's May 21, 2001 request did not include any relevant and pertinent new evidence not previously

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<sup>1</sup> 20 C.F.R. § 10.616(a) (1999).

<sup>2</sup> *Herbert C. Holley*, 33 ECAB 140 (1981).

<sup>3</sup> *Rudolph Bermann*, 26 ECAB 354 (1975).

<sup>4</sup> The Board has held that a denial of review on this basis is a proper exercise of the Office's discretion. *E.g., Jeff Micono*, 39 ECAB 617 (1988).

<sup>5</sup> 20 C.F.R. § 10.606(b)(2) (1999).

<sup>6</sup> 20 C.F.R. § 10.608(b) (1999).

considered by the Office, appellant is not entitled to a review of the merits of her claim based on the third requirement under section 10.606(b)(2).<sup>7</sup>

As appellant is not entitled to a review of the merits of her claim pursuant to any of the three requirements under section 10.606(b)(2), the Board finds that the Office did not abuse its discretion in denying appellant's May 21, 2001 request for reconsideration.<sup>8</sup>

The decisions of the Office of Workers' Compensation Programs dated September 28 and February 26, 2001 are hereby affirmed.

Dated, Washington, DC  
September 3, 2002

Michael J. Walsh  
Chairman

David S. Gerson  
Alternate Member

Willie T.C. Thomas  
Alternate Member

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<sup>7</sup> When the case was pending before the Branch of Hearings and Review, appellant submitted an August 21, 2000 report from Dr. Joseph W. Olinger, who diagnosed bilateral carpal tunnel syndrome. However, Dr. Olinger did not address the etiology of appellant's condition and, therefore, his opinion is insufficient to warrant reopening the claim for a merit review.

<sup>8</sup> Appellant submitted evidence on appeal that she had not previously submitted to the Office prior to the issuance of its September 28, 2001 decision. Inasmuch as the Board's review is limited to the evidence of record that was before the Office at the time of its last decision, the Board cannot consider appellant's newly submitted evidence. 20 C.F.R. § 501.2(c).